

No. S \_\_\_\_\_

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

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**DAVID,**

Petitioner

vs.

**APPELLATE DIVISION OF THE SAN FRANCISCO SUPERIOR  
COURT and COURT OF APPEAL OF THE STATE OF  
CALIFORNIA, FIRST APPELLATE DISTRICT,**

Respondents,

**THE PEOPLE OF THE STATE OF CALIFORNIA,**

Real Party in Interest

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After Denial of Petition to Transfer Case from Appellate Division  
to Court of Appeal, No. A137730

Appellate Div. Case No. APP-12-7434

San Francisco Superior Court Crim. Case No. CZA0308327

(Honorable Ronald W. Stovitz, Judge Pro Tem)

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**PETITION FOR WRIT OF CERTIORARI  
AND OTHER APPROPRIATE RELIEF;  
MEMORANDUM OF POINTS AND AUTHORITIES  
(SUPPORTING EXHIBITS FILED UNDER SEPARATE COVER)**

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David  
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Petitioner, In Propria Persona

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FEB 27 2013

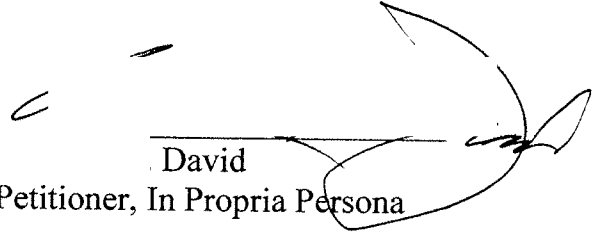
CLERK SUPREME COURT

**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

(Cal. Rules of Court, rule 8.208)

There are no interested entities or persons to list in this certificate  
(Cal. Rules of Court, rule 8.208(e)(3)).

Dated: February 27, 2013

  
David  
Petitioner, In Propria Persona

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## PETITION FOR A WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE  
AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF  
THE STATE OF CALIFORNIA:

### INTRODUCTION

#### **The Nature Of The Case.**

The City and County of San Francisco has installed red light camera systems at approximately 25 intersections deemed the most dangerous in the City. At the time of the alleged infraction, cities were authorized to use the camera systems only if they complied with Vehicle Code section 21455.5, subdivision (a)(1) (hereafter “section 21455.5(a)(1)”),<sup>1</sup> which required a city to post warning signs indicating the systems’ presence either (1) facing traffic in all directions at the automated enforcement intersection where the alleged violation occurs or (2) at “all major entrances to the city” including “at a minimum freeways, bridges and state highway routes.”<sup>2</sup>

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<sup>1</sup> All statutory references are to the Vehicle Code unless otherwise indicated. Until January 1, 2013, the section read as follows:

(a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated enforcement system if the governmental agency utilizing the system meets all of the following requirements:

(1) Identifies the system by signs that clearly indicate the system’s presence and are visible to traffic approaching from all directions, or posts signs at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes.

<sup>2</sup> Effective January 1, 2013, section 21455.5(a)(1) was amended to read as follows:

(a) The limit line, the intersection, or a place designated in Section 21455, where a driver is required to stop, may be equipped with an automated traffic enforcement system if the

In violation of State law, the City posted photo enforced warning signs at only approximately 10% of the camera-installed intersections and at none of the major entry points to the City on the bridges, including the Golden Gate Bridge. Instead, the City posted signs at intersections not required by State law. According to the SFMTA website, all but three of the signed intersections are *not* monitored by cameras. The absence of the state-mandated signs renders the unsigned, camera-monitored intersections no safer than they were before cameras were used.

The unauthorized use of the cameras in lieu of police officers has enabled the City to cite and prosecute motorists for unwittingly and inadvertently running a red light by a small fraction of a second. The cost to the motorist is \$480 and a point on his or her DMV record. The City is

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governmental agency utilizing the system meets all of the following requirements:

(1) Identifies the system by signs posted within 200 feet of an intersection where a system is operating that clearly indicate the system's presence and are visible to traffic approaching from all directions in which the automated traffic enforcement system is being utilized to issue citations. A governmental agency utilizing such a system does not need to post signs visible to traffic approaching the intersection from directions not subject to the automated traffic enforcement system. Automated traffic enforcement systems installed as of January 1, 2013, shall be identified no later than January 1, 2014.

Although the amended statute no longer mandates an alternative requirement that signs be posted at all major entrances to a city including at a minimum bridges, freeways and state highway routes, the fact that non-signed, camera monitored intersections installed pre 2013 are given until 2014 to conform with the new requirement does not give cities like San Francisco a free pass. To the contrary, it is logical that the legislation was intended to require cities with non-compliant intersections to continue to maintain the "major entrance" signage until their camera-monitored intersections are compliant.

thus incentivized to continue operating in this fashion due to the easy source of revenue the cameras provide.

If the City complied with State law, motorists would be forewarned to be cautious by *always* stopping at an amber light to avoid the split-second conundrums, thereby potentially reducing the City's revenue but enhancing the safety of those intersections and promoting the purpose of the camera installations.

Petitioner has challenged as unauthorized his prosecution of a red light violation at an unsigned intersection because the City itself is violating State law governing the use of camera systems. Petitioner's research disclosed no appellate authority construing the sign-posting requirements set forth in section 21455.5(a)(1), or determining whether a city may prosecute a red light violation based on evidence derived from automated enforcement cameras if it employs a sign-posting method that does not comply with state law. Thus, this case presents an issue of first impression.

What petitioner has discovered is that the trial court and the Appellate Division have failed to fulfill their essential purposes to independently and fairly apply the statutory and case law of this State. These failures form the bases for this petition.

Petitioner was charged with running a red light in San Francisco. The case was based on photographic evidence from a red light camera enforcement system. At trial, petitioner sought a dismissal on the ground that the enforcement system was unauthorized because it did not comply with the sign-posting requirements in Vehicle Code section 21455.5 (a)(1). The trial judge held that the enforcement was authorized, not because San Francisco complied with the statutory requirements, which it clearly did not, but because San Francisco's signs were, in his words, "better" located than that the locational requirements in the Vehicle Code. The court then



convicted the petitioner of a red light violation based on camera-generated evidence.

Petitioner timely appealed to the Appellate Division. While the appeal was pending, petitioner discovered that the Appellate Division clerk had not complied with several Rules of Court requiring service of numerous notices on the City Attorney. As a result, the City Attorney did not participate in the appeal. The Appellate Division rejected without comment petitioner's written request that the clerk's office comply with the rules and that the court reopen briefing to permit the City Attorney to weigh in on the merits.

The Appellate Division then rejected the appeal. Rather than consider and decide the two substantive issues (one of which is the above-mentioned issue of first impression and statewide importance) raised in petitioner's opening brief, the court's opinion addressed solely an unbriefed and irrelevant issue not raised by petitioner, namely, whether there was substantial evidence to support the conviction. Both the Appellate Division and the Court of Appeal denied timely requests to transfer the case to the Court of Appeal.

Petitioner now seeks a writ issued by this Court directing the Court of Appeal to transfer the case from the Appellate Division, consider the issues raised by petitioner on appeal, and decide the case on the merits.

**Issue Presented.**

The sole issue presented by this petition is whether the Appellate Division acted in excess of its jurisdiction resulting in the deprivation of petitioner's right to a meaningful appeal and, if so, to grant relief so that his case will be heard and decided on the merits.

**Why This Court Should Grant The Petition.**

This court should grant the petition because the Appellate Division

acted in excess of its jurisdiction depriving petitioner of his right to a meaningful appeal and because the principal underlying legal issue on appeal is novel and of statewide importance.

In addition to being a case of first impression, the issues are of statewide importance because there are ongoing prosecutions throughout the state based on the use of automated enforcement red light camera systems that may not be compliant with the Vehicle Code.

In addition, the Appellate Division's systematic non-compliance with the California Rules of Court requires this court's intervention. In failing to serve the City Attorney with required notices, the court seriously undermined the adversary system on which our system of justice relies. Unless this petition is granted, petitioner will have been denied his right to have an appellate court fairly and independently consider and decide the legal questions raised by the appeal.

#### **PETITION FOR WRIT OF CERTIORARI**

Petitioner                      David petitions this court for a writ of certiorari directed to the Court of Appeal to transfer the case from the Appellate Division, and by this verified petition alleges:

#### **Authenticity Of Exhibits**

1.        All exhibits accompanying this petition are true copies of original documents on file with the respondent courts. The exhibits are incorporated herein by reference as though fully set forth in this petition. The exhibits are paginated consecutively, and page references in this petition are to the consecutive pagination. The accompanying memorandum of points and authorities is made part of this petition by reference.

#### **Beneficial Interest Of Petitioner; Capacities Of Respondents And Real Parties In Interest**

2. Petitioner David is a defendant in *People of the State of California v. David*, San Francisco Superior Court, No. CZA 030-8327; appellant in the respondent Appellate Division of San Francisco Superior Court, No. APP 127434; and the appellant in respondent Court of Appeal, First Appellate District, Division One, No. A137730. The People of the State of California are the Real Parties in Interest.

### **Timeliness Of Petition**

3. The Appellate Division filed its judgment on appeal on December 27, 2012. (Exh. 11, pp. 92-94.) On January 10, 2013, petitioner timely filed a motion for rehearing (Exh. 12, pp. 95-97) and an application to certify this case for transfer to the Court of Appeal (Exh. 13, pp. 98-118). Neither the motion nor the application was acted upon, and both were deemed denied by operation of law when the judgment became final on January 26, 2013. On January 29, 2013 petitioner timely filed with the Court of Appeal a petition to transfer the case from the Appellate Division to the Court of Appeal. (Exh. 14, pp. 119-129.) The petition to transfer was denied the following day on January 30, 2013. (Exh. 15, pp. 130.) This petition is timely. (See *Peterson v. Superior Court* (1982) 31 Cal.3d 147, 163-164.)

### **Factual And Procedural Background**

#### **Proceedings In The Trial Court.**

4. Petitioner David was charged with a red light violation under section 21453, subdivision (a), based solely on evidence generated by a red light camera automated enforcement system. The trial took place on August 14, 2012. The principal issue was whether the prosecution was unauthorized because San Francisco's automated system did not comply with state law. At the time of the alleged infraction, section

21455.5(a)(1) required municipalities using automated enforcement systems to post warning signs indicating the systems' presence either (1) facing traffic in all directions at the automated enforcement intersection where the alleged violation occurs or (2) at "all major entrances to the city" including "at a minimum freeways, bridges and state highway routes."

5. The undisputed trial evidence showed that: (a) petitioner's vehicle entered the intersection 3/10 of a second after the signal had changed from amber to red; (b) no signs notifying motorists of the presence of the system had been posted either (i) at the Hayes/Polk intersection where the alleged violation took place (RT, Exh. 4, pp. 21:17-22:6)<sup>3</sup> or (ii) on the Golden Gate Bridge (or on any other bridge or freeway) at the point where motorists enter San Francisco (RT, Exh. 4, pp. 25:19-27:1); (c) San Francisco posted 67 photo enforced warning signs at selected intersections where a motorist first encounters a signal-controlled intersection *after* entering the city (RT, Exh. 4, pp. 22:1-6); according to the SFMTA website, all but three of these intersections are *not* monitored by cameras; (d) these selected intersections are located a mile or more distance from the actual major entry points of the city on bridges and freeways. The trial judge cited as an example of San Francisco's compliance the photo enforced "notice" at the "first signal coming off the Golden Gate Bridge" at the "intersection of Lake and California Street [the court probably meant Park Presidio]" (RT, Exh. 4, pp. 25:1-12).

6. The trial court ruled that San Francisco's sign-posting

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<sup>3</sup> References are to a reporter's transcript prepared by petitioner from recording of trial provided by the superior court. The transcript is attached to Appellant's Motion to Augment. (Exh. 4, pp. 11-35.) Judge Karnow, presiding judge of the Appellate Division, authorized use of the transcript in response to petitioner's motion to augment the record. (See Exh. 6, pp. 65-67.)

complied with the Vehicle Code because what it “does is actually something better” than the requirements specified in section 21455.5(a)(1). (RT, Exh. 4, pp. 25:1-12.) The court found petitioner guilty of running a red light based on the photographs from the automatic enforcement cameras. (RT, Exh. 4, pp. 28:25-29:5.) It also denied petitioner’s request to attend traffic school. (RT, Exh. 4, pp. 33:18-20.)

**Proceedings In The Appellate Division And The Court Of Appeal.**

7. Petitioner timely appealed to the Appellate Division on two grounds: First, that the prosecution based solely upon camera evidence was not legally authorized because San Francisco did not comply with either of the Vehicle Code’s two alternative mandatory sign-posting requirements (AOB, Exh. 7, p. 71); and second, if the prosecution was authorized under the Vehicle Code, petitioner should have been afforded the opportunity to opt for traffic school because petitioner was not given pre-trial access, upon his request, to all of the photographic evidence introduced at the trial as required by section 21455.5, subdivision (f) (AOB, Exh. 7, pp. 71 and 80-81). The Appellate Division rejected the appeal in an opinion holding there was substantial evidence for the conviction (an issue not raised on appeal), but failed to address any of the issues raised on appeal. (Exh. 11, pp. 92-94.) Although rule 8.887(a) does not require the Appellate Division to render a written decision, it defies logic that it considered the appellate issues of first impression raised, namely, the meaning of section 21455.5(a)(1) and whether San Francisco complied with the statutory requirements. The only reasonable interpretation of the Appellate Division’s action is that it ignored the issues raised in the appeal.

8. On January 10, 2013, petitioner timely moved for a rehearing (Exh. 12, pp. 95-97) and applied to the Appellate Division for certification to transfer the case to the Court of Appeal. (Exh. 13, pp. 98-118.) The

Appellate Division took no action in response to these filings, and thus they were denied by operation of law. (See Cal. Rules of Court, rule 8.1005(b)(5).)

9. On January 29, 2013, petitioner timely filed a petition with the Court of Appeal to transfer the case there. (Exh. 14, pp. 119-129.) The court denied the application within 24 hours and without explanation. (Exh. 15, p. 130.)

### **Grounds For Relief**

10. Petitioner seeks an order directing respondent Court of Appeal to transfer the case from the respondent Appellate Division and to consider and decide the appeal on the merits. The basis for relief is that the Appellate Division acted in excess of its jurisdiction resulting in the deprivation of petitioner's right to a meaningful appeal of his conviction.

11. The central legal issue in this petition is whether the Appellate Division acted in excess of its jurisdiction in either of two respects: (1) when it failed to follow Rules of Court requiring service of court notices upon the People, thereby undermining the adversary process; and (2) when it failed to consider and decide the issues presented on appeal, thereby abdicating its essential role as an appellate court and depriving petitioner of his right to due process under the law.

### **The Appellate Division Failed To Follow The Rules Of Court**

12. The trial court and the Appellate Division failed to comply with several material Rules of Court requiring service on the People of notices and rulings. These include the notice of appeal (Cal. Rules of Court, rule 8.901(b)(1)), a copy of the record of the oral proceedings (Cal. Rules of Court, rule 8.922(b)(3)), the notice of the filing date when the original record was filed in the Appellate Division (Cal. Rules of Court, rule 8.922(c)) (Exh. 3, pp. 6-7), the briefing schedule (Cal. Rules of Court,

rule 8.926) (Exh. 3, pp. 6-7), and the notice of the oral argument (Cal. Rules of Court, rule 8.929(c)(1)) (Exh. 8, pp. 84-85). It also failed to serve upon the People rulings on two pre-trial motions (Exh. 6, p. 67), as well as its Judgment on Appeal, the latter failure a violation of rule 8.887(b), (Exh. 11 pp. 92-94). Although petitioner served upon the People all of his filings in the Appellate Division and the Court of Appeal (Exh. 4, p. 35; Exh. 5, p. 64; Exh. 7, p. 83; Exh. 9, p. 88; Exh. 12 p. 97; Exh. 13, p. 118; Exh. 14, p. 129), the People did not participate in the appeal. Petitioner in writing invited the attention of the presiding judge of the Appellate Division to these irregularities, requested the court's compliance with the rules, and asked that the People be invited to brief the issues. (Exh. 9, pp. 86-88.) When petitioner received no response to these requests, he arranged for service upon the City Attorney of all documents the Appellate Division should have served under the Rules of Court. (Exh. 10, pp. 89-91.) At the oral argument, the Appellate Division denied the petitioner's requests without explanation.

13. The Appellate Division's failure to comply with the Rules of Court has resulted in the People not participating in the appeal, and as a result has interfered with the functioning of the adversary process. That process "assumes that highly motivated searches simultaneously undertaken from different perspectives are likely to generate the most comprehensive data (evidentiary and legal) and the widest array of interpretations of it – and it is that comprehensiveness of data, and the clash of views about what inferences should be drawn from it, that enable the adversary system to deliver reliable results." (*JumpSport, Inc. v. Jumping, Inc.* (N.D. Cal. 2003) 213 F.R.D. 329, 334.)

**The Appellate Division Failed To Decide The Issues Raised By The Appeal.**

14. The appeal presented two questions. The first was whether the prosecution was unauthorized because San Francisco did not comply with the Vehicle Code's prerequisite warning sign posting requirements necessary to utilize an automated enforcement system. (AOB, Exh. 7, p. 71.) The second question was, assuming the prosecution was authorized under the Vehicle Code, whether the trial court abused its discretion when it denied petitioner the opportunity to elect traffic school.<sup>4</sup> (AOB, Exh. 7, pp. 71, 80-81.)

15. The Appellate Division never mentioned, much less adjudicated, the questions raised by the appeal. Instead, the Appellate Division decided a different issue not presented by the appeal, namely, whether the evidence was sufficient to support the finding of guilt. (Exh. 11, pp. 92-94.) The court also denied petitioner's request for judicial notice of the legislative history of the Vehicle Code sign-posting requirements for automated enforcement systems. (*Ibid.*) The court's failure to decide the questions presented constituted a failure to perform its appellate function as required by the Constitution, statutes, rules and case law of this State, and it deprived petitioner of due process of the law guaranteed by the California and U.S. Constitutions.

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<sup>4</sup> The second issue arose because the court admitted, over objection, photographic evidence that was not provided in pre-trial discovery upon petitioner's request as required by statute. (See Veh. Code, § 21455.5, subd. (f); RT, Exh. 4, pp. 13:11-16:24, and 31:23-33:9.) At the conclusion of the trial, petitioner sought the opportunity to opt for traffic school after this objectionable evidence was admitted, but the court denied the request. (RT, Exh. 4, pp. 33:18-20.) On appeal, petitioner argued that the purpose of pre-trial discovery was to enable the accused to evaluate the photographic evidence and make an informed decision whether to mount a defense or opt to attend traffic school. (AOB Exh. 7, pp. 80-81.) Being deprived of this discovery was therefore prejudicial to petitioner, who contended he should have been given the opportunity to opt for traffic school.



16. There being no dispute at the trial about where the City had or had not posted warning signs, and there being no binding precedent interpreting the meaning of the sign posting requirements set forth in section 21455.5(a)(1), and how those requirements applied to San Francisco's sign-posting methodology, the Appellate Division failed to follow stare decisis in the performance of its duty in the following respects:

- (1) It failed to review de novo the pure question of law presented by the appeal;
- (2) It failed to decide whether the meaning of section 21455.5(a)(1), was directory or mandatory, or clear or ambiguous, and if the latter, to examine the legislative history; and
- (3) In light of its determination of the foregoing, to decide whether the prosecution based on camera-generated evidence was unauthorized by reason of San Francisco's non-compliant sign-posting scheme.

17. The clear purposes of the sign-posting requirements are to safeguard the public by informing motorists of the presence of the cameras at signed/monitored, controlled intersections so they will proceed cautiously; and to give due process notice (analogous to radar speed enforcement warning signs) to inform motorists at each major point of entry to the city that the city uses undisclosed automated enforcement systems at otherwise unsigned, controlled intersections. The legislative history of SB833, enacted in 1995, confirmed that the purpose of the posting requirements was to provide "improved public safeguards and [to satisfy] due process requirements [by posting] identification signs visible to approaching traffic . . . ." (Exh. 5, p. 62 [Letter from Sen. Quentin Kopp to Governor Pete Wilson (Sept. 20, 1995)].)

18. The trial evidence showed that the camera system calculated that petitioner's vehicle entered the intersection 3/10 of a second after the

light turned red. This short time interval is substantially less than the time necessary for an average person to apply brakes after sensing danger. (See *Kalfus v. Frazee* (1955) 136 Cal.App.2d 415, 423 [expert testimony that the normal reaction time to apply brakes is  $\frac{3}{4}$  of a second].) Thus, San Francisco issues citations for what are likely unintended split-second violations akin to an old fashioned speed trap. If there were photo-enforced warning signs in place at such intersections, motorists would have a high incentive to stop whenever an amber light appeared, thereby avoiding the split-second conundrum and also making the intersection safer. After the trial, petitioner compared the 67 intersections where San Francisco has posted warning signs with the SFMTA web site listing of the camera installed intersections [<http://www.sfmta.com/cms/venf/14440.html>] and learned that, of the 25 intersections with camera systems, only three have signs indicating the systems' presence. San Francisco's known financial woes give it an incentive *not* to install warning signs at camera-monitored intersections so as to maximize fine revenue from motorists such as petitioner victimized by the setup.

19. Unless the case is transferred to the Court of Appeal for adjudication, San Francisco can be expected to continue unauthorized prosecutions of red light violations based on evidence derived from automated enforcement systems that do not comply with section 21455.5(a)(1). (See *Keh v. Walters* (1997) 55 Cal.App.4th 1522, 1530 ["The appellate department then certified the case for transfer to this court, on grounds that there is a lack of appellate authority on the issues and because it was anticipated that the subject conduct would continue. We accepted transfer . . .".])

#### **Absence Of Other Remedies**

20. The right of appeal from a conviction is a basic and

fundamental right in California because the courts are the only means by which abuse of executive police power can be checked. For that right to be meaningful, it is necessary that appellate courts address and decide in a fair and impartial manner the merits of the appeal in deciding whether to overturn the conviction.

21. Permitting an appellate court to affirm a conviction without addressing the issues raised on appeal would cause grave and irreparable harm not only to the appellant, but also to the cause of justice, as it would undermine the rule of law and constitute a denial of due process.

22. In the present case, petitioner found himself on an entirely uneven legal playing field in the following respects. First, the trial court ratified San Francisco's ultra vires decision to substitute a third method of warning sign placement in lieu of the Legislature's two alternative, mandatory methods. Second, the Appellate Division disregarded the Rules of Court in that it failed to give required notices to the City Attorney, thereby encouraging the City Attorney to ignore the important substantive issues in appeal as though it never took place. Third, the Appellate Division and the Court of Appeal ignored the merits of the principal pure legal question presented in the appeal, namely, whether prosecutions based on evidence from an automated enforcement camera system are permitted notwithstanding the city's noncompliance with the Vehicle Code's requirements.

23. Unless this court issues its writ of review directing the Court of Appeal to transfer the case from the Appellate Division for adjudication on the merits, petitioner will be denied meaningful appellate review. The Appellate Division has gone rogue, and unless this court acts, the harm to petitioner is great and irreparable. A writ from this Court is the *only* available remedy to ensure the provision of impartial and effective justice

for a citizen challenging the lawfulness of unconstrained police activity.

WHEREFORE, petition respectfully requests this court to:

- 1 Issue a writ of review directing the Court of Appeal for the First Appellate District, Division One, to vacate its order of January 30, 2013, denying the petition to transfer and to enter a new and different order granting the petition to transfer and thereafter to invite the People to participate in the appeal and adjudicate the questions presented;
- 2 Award petitioner his costs; and
- 3 Grant such other relief as may be just and proper.

Dated: February 27, 2013

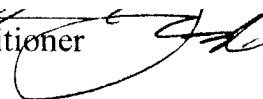
Respectfully submitted,

David, Petitioner  
In Propria Persona

**VERIFICATION**

I am petitioner herein and have prepared the foregoing petition and know its contents. The facts alleged in this petition are within my own knowledge, and I know them to be true. I declare under penalty of perjury that the foregoing is true and correct. Executed this 27<sup>th</sup> day of February at San Francisco, California.

\_\_\_\_\_  
David, Petitioner



## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. This Court Should Order The Court Of Appeal To Review The Trial Court's Judgment.**

California's judicial system contemplates that no lower court decision should be insulated from appellate review.

[T]he structure of the judicial system resembles a pyramid, with appellate courts and ultimately the Supreme Court occupying the top of that pyramid. The primacy of appellate court decisions serves to foster consistency and proportion in the interpretation of law and the articulation of judicial policy which would be impossible if the decisions of individual trial courts were insulated from meaningful review.

(*Hurtado v. Statewide Home Loan Co.* (1985) 167 Cal.App.3d 1019, 1023-24, disapproved on another ground by *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479, fn. 4.)

Without appellate guidance, different lower courts and municipalities using red light camera systems may inconsistently interpret the Vehicle Code's signage requirements, resulting in different trial court outcomes. As Justice Cardozo explained, expressing the *raison d'être* for the common law precedential system, "It will not do to decide the same question one way between one set of litigants and the opposite way between another." (Cardozo, *The Nature of the Judicial Process* (1921) at p. 33.) The *Hurtado* holding expressed the same point: "It should offend our sense of basic fairness to think that one plaintiff would have his case dismissed where on exactly the same set of facts, another plaintiff before a different trial judge would be allowed to proceed to trial." (*Hurtado, supra*, 167 Cal.App.3d at p. 1027.)

### **II. The Writ Of Certiorari Should Issue Because The Appellate Division Acted In Excess Of Its Jurisdiction, And Petitioner Has No Other Plain, Speedy And Adequate Remedy.**

Code of Civil Procedure section 1068, subdivision (a), authorizes the

grant of a writ of review (also called a writ of certiorari) “when an inferior tribunal, board, or officer, exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor, in the judgment of the court, any plain, speedy, and adequate remedy.” (See also Code Civ. Proc., § 1074 [“The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer.”].) “The writ of certiorari may be used to question court’s exercise of unauthorized power in case wherein it had jurisdiction of parties and subject matter.” (*Fortenbury v. Superior Court* (1940) 16 Cal.2d 405, 408.) A writ of review is proper when an inferior court “has exceeded its jurisdiction and there is no appeal nor other adequate remedy.” (*Imperial Beverage Co. v. Superior Court* (1944) 24 Cal.2d 627, 630.)

**A. The Appellate Division’s Refusal To Comply With The Rules Of Court Was In Excess Of The Court’s Jurisdiction.**

The Appellate Division acted in excess of its jurisdiction by ratifying actions taken by its clerks to ignore unambiguous requirements the Rules of Court that the People be given certain notices as detailed above.

Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or ***rules developed by the courts*** and followed under the doctrine of stare decisis, are in excess of jurisdiction, insofar as that term is used to indicate that those acts may be restrained by prohibition or annulled on certiorari.

(*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291, emphasis added).

However, it seems well settled (and there appears to be no case holding to the contrary) that when a statute authorizes prescribed procedure, and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction, and

certiorari will lie to correct such excess.

(*Id.* at p. 290; also *Franczak v. Liberty Mutual Ins. Co.* (1977) 19 Cal.3d 481, 489 [quoting this language with approval].)

**B. The Appellate Division's Refusal To Follow Stare Decisis By Conducting A De Novo Review Was in Excess Of The Court's Jurisdiction.**

The Appellate Division was required by stare decisis to conduct a de novo review because there were no disputed facts material to the question presented on appeal – namely whether San Francisco's sign-posting scheme complied with section 21455.5(a)(1). The evidence where the City had and had not posted warning signs, and its reasons for doing what it was or was not doing, was undisputed at the trial.

Appellate courts must independently determine the proper interpretation of a statute. (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 432.) Likewise, application of the statute to undisputed facts presents a question of law subject to independent appellate determination. (*International Engine Parts, Inc. v. Feddersen & Co.* (1995) 9 Cal.4th 606, 611.) “When the decisive facts are undisputed, we are confronted with a question of law and are not bound by the findings of the trial court.” (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.) The rationale is that “[i]f such questions were effectively removed from the consideration of the appellate courts, the development and clarification of ... important issues ... would be impeded.” (*Id.* at p. 801, citation omitted.)

The Appellate Division, no different from any other appellate court, was required by stare decisis to apply the de novo standard of review to pure legal questions.

***This rule requiring a court exercising inferior jurisdiction to follow the decisions of a court exercising a higher jurisdiction has particular application to the appellate departments of the superior court.*** Until very recently, the



decisions of those courts were not subject to appellate review except by the use of original writs in exceptional cases. Even [now], *the right of review is strictly limited [citations]. It would create chaos in our legal system if these courts were not bound by higher court decisions.*

The *Abelleira* case, *supra*, held that the rule of stare decisis was a rule of jurisdiction for the purposes of the writ of prohibition (17 Cal.2d at p. 293). For the reasons stated in that case, that rule is also one of jurisdiction for the purposes of the writ of certiorari. *Therefore, the appellate department of the superior court exceeded its jurisdiction when it refused to follow Kroiss v. Butler, supra, 129 Cal.App.2d 550.*

(*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 456, emphasis added.) Thus, the Appellate Division's failure to apply the correct standard of review was in excess of its jurisdiction.

**C. The Appellate Division's Refusal to Follow Stare Decisis In The Interpretation Of Section 21455.5(a)(1) Was In Excess Of The Court's Jurisdiction.**

Because the meaning and intent of section 21455.5(a)(1) were critical to the determination whether San Francisco's red light camera warning sign scheme was code-compliant, it was necessary for the Appellate Division to go through the appropriate analysis laid out decades ago by the Supreme Court and the Courts of Appeal.

Where the statutory language is unambiguous, the plain language governs any interpretation of the statute. (See, e.g., *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d 491, 501; *Leonte v. ACS State and Local Solutions, Inc.* (2004) 123 Cal.App.4th 521, 526-527.) "A statute is regarded as ambiguous if it is capable of two constructions, both of which are reasonable." (*Hughes v. Bd. of Architectural Examiners* (1998) 17 Cal.4th 763, 776.) Where a statute is ambiguous, a court must look for evidence of legislative intent, "including the statutory scheme of

which the provision is a part, the history and background of the statute, the apparent purpose, and any considerations of constitutionality.” (*Ibid.*)

But the analysis does not end there. Even if the statute is unambiguous, whether the city’s noncompliance invalidates any subsequent governmental action – such as prosecution of an infraction – depends on whether the statute is deemed to be “mandatory” or “directory.” (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 923-924.) That requires the reviewing court to ascertain the Legislature’s intent. (*Id.* at p. 924.)

Petitioner requested the Appellate Division to take judicial notice of the legislative history of section 21455.5(a)(1). The Appellate Division disregarded the questions presented, failed to interpret the statute, and denied petitioner’s motion to take judicial notice of the legislative history. Instead it decided a different question not raised on appeal – namely, whether there was substantial evidence to support the conviction. It thereby acted in excess of its jurisdiction.

#### CONCLUSION

For the foregoing reasons, this court should issue a writ directing the Court of Appeal to vacate its order of January 30, 2013, denying the petition to transfer and to enter a new and different order granting the petition to transfer and thereafter to invite the People to participate in the appeal and adjudicate the questions presented.

Respectfully submitted,

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David  
In Propria Persona